Supreme Court, U.S.
FILED
OCT 27 2003

No. 03 640

IN THE

Supreme Court of the United States

LLOYD VICKROY and
TIMOTHY J. VICKROY,

Petitioners

v.

WISCONSIN DEPARTMENT OF
TRANSPORTATION, et al.,

Respondents

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

LLOYD VICKROY, Pro Se
TIMOTHY J. VICKROY, Pro Se
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1900 COUNTY ROAD 7320
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22 pp

QUESTIONS PRESENTED

May a state through, law, custom or practice enable its residents to convert property owned and taxed in a different state to their own use and profit without transfer of title, or process due under the 6th amendment and does this practice violate the Commerce Clause and the Privileges and Immunities clause?

Does Wis. Stat. 814.28 Violate the Right to Free Passage and the Privileges and Immunities Clause?

May a court ignore denial of procedural due process when the question is presented to it?

Under what conditions is a state entity transformed into a self-sustaining instrumentality, and has the state of Wisconsin Department of Transportation passed this threshold?

LIST OF PARTIES

Timothy J. Vickroy; Lloyd Vickroy, Petitioners

State of Wisconsin Department of Transportation; Interment Corporation; Wearer D. Swannigan; Ultea, Inc.; County of Racine, Wisconsin; Township of Mount Pleasant, Wisconsin; Crum & Forster, Respondents.

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IN THE

Supreme Court of the United States

PETITION FOR THE WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

For cases from **state courts, federal district, and the Seventh Circuit Court of Appeals:**

OPINIONS BELOW

The opinion of the highest court to review the merits appears at Appendix A and is unpublished. The opinions of the Federal District Court appear in Appendix B. The opinion of the Wisconsin State Supreme Court appears in Appendix C. The Opinion for the Wisconsin State Court of Appeals appears in Appendix D. The opinion of the Racine County Circuit Court appears in Appendix E.

JURISDICTION

For cases from **state courts:**

Ervin v State 41. Wis. 2d 194; 163 N. W. 2d 207 (1968), The Mayor v Cooper (6 L. Ed.247, 1868).

For cases from **federal courts:**

Archie v City of Racine (847 F. 2d 1211:1988), Carey v Piphus (435 U.S. 247: 1978), Crandall v State of Nevada (73 U.S. 35:1867), Felder v Casey (487 US 131:1988), Giaccio v State of Pennsylvania (15 L. Ed. 2d. 447: 1966), The Mayor v Cooper (6 L. Ed.247: 1868), Saenz v Roe (526 U.S. 489: 1999), Edwards v California (314 U.S. 160: 1941).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments and Articles involved: The Fourth, Fifth, Sixth, Eighth, Eleventh and Fourteenth Amendments of the Federal Constitution as well as Article I § 10, and Article IV § 2 clause 1. Title 18 U.S.C. § 241,

242. Title 42 U. S. C. § 1983.

Wis. Stat. 814.28.

Wis Stat. §. 16.61 (4) (b); RDA

The established custom and practice in the State of Wisconsin of allowing the residents and businesses in that state to take possession and ownership of property belonging to others in order to satisfy their own debts, without the right of due process..

STATEMENT OF THE CASE

Petitioner Timothy J. Vickroy while traveling northbound on Wisconsin State Highway 31, northbound at State Highway 21, in the County of Racine, Township of Mount Pleasant, on December 2, 1998 did have an accident due to defect in roadway design, caused when a vehicle driven by Warner D. Swannigan, for his employer, now Intermet, Inc. and leased from ULTEA, Inc. Mr. Swannigan, then a resident of Michigan violated Timothy J. Vickroy's right of way and caused damage to the

vehicle he was driving and permanent injury to his person. Mr. Swannigan was cited at the scene of the accident.

Passerby summoned aid and paramedics as well as a police officer from the Township of Mount Pleasant arrived who at the rear of Mr. Vickroy's auto conspired to, and subsequently did violate Title 18 U.S.C. § 241, 242 in order to obtain forced release of Mr. Vickroy's auto to a private towing company by confining Mr. Vickroy in his car refusing to transport him for medical aid, to let him seek medical aid on his own, or let outside aid approach if it was some how obtained, thus created a special custodial relationship under Title 42 U. S. C. § 1983 .

Mr. Vickroy vigorously objected to this practice, but as the effects of the accident began to become apparent he was forced to choose between his property and care that might have meant his life; therefore he signed the release and only then was transported to an emergency

room for care.

On January 12, 1999 the counsel retained by Timothy J. Vickroy made it clear he would only pursue claims against the private parties for injuries. Timothy J. Vickroy and his father Lloyd Vickroy, co-owner of the vehicle involved in the accident, proceeded in state court to recover their vehicle that, despite a written agreement with Intermet's insurance company, Crum & Forester, which was made in bad faith by Crum & Forester, stating that the Vickroy's retained ownership and possession of the auto had been sold to an auto salvage yard, in Milwaukee some eight months before, with out consent or due process of law. Thus making the act of taking Vickroy's property, stolen property.

Before the Vickroy's, as nonresidents of Wisconsin, could have their day in court they had to comply with Wis. Stat.814.28 which required them to either retain a Wisconsin attorney or prepay the opposing

attorney, in this instance the lawyer for Interstate Towing and Mobile, $2000.00 in projected costs and attorneys fees before their case could be filed by the clerk. Wisconsin residents need only pay the filing fee with the court clerk.

The State of Wisconsin claimed in this suit, offering no proof, that the State of Wisconsin Department of Transportation was an agency of the State and therefore not open to suit. More importantly, it petitioned the circuit court to substitute the rules of civil procedure used by the Seventh Circuit for those used by the state of Wisconsin because those used by the state required discovery. Discovery would have given the Vickroys a list of every person in state, county or township government who violated a ministerial duty which caused or contributed to the accident in question. Information they have a right to by Wisconsin law. The Racine County Circuit court did denying them discovery and procedural

due process.

The Racine County Circuit Court dismissed the case against the State of Wisconsin Department of Transportation, as having immunity of the State.

The Racine County Circuit Court dismissed the case against Crum and Forester, on a motion by Vickroy, when it was thought that a good faith agreement was signed between them. The circuit court dismissed the case against Interstate Towing and Mobil, without discovery, because there was no contract with them.

The judge of the Racine County Circuit Court informed the Vickroys that their Missouri title to the property in question was meaningless under Wisconsin law. That court did not cite any case law to back this ruling up. That Vickroys contract was meaningless because they "must have known" that the car was going to be taken.

This verdict was appealed to the Wisconsin State

Court of Appeals and Supreme Court to no avail.

Six months before the State statute of limitations on the accident was to run out the attorney retained by Timothy J. Vickroy informed him that he would only continue representing him if he agreed to a settlement of $1400.00. Mr. Timothy J. Vickroy refused; after a search was unable to find further counsel and was forced to proceed pro se.

The Vickroys filed their case in federal court asking the court for relief and remedy from the civil torts and constitutional violations committed against them.

Additionally they asked for removal of the state case to federal court using The Mayor v Cooper (6 L. Ed.247: 1868) as their authority; later filing an amended complaint including civil RICO because of the confluence of behaviors, acts, and colluding between the private, municipal and state actors which violated the Vickroys's constitutional rights and laws and brought fraud upon the

Vickroys The State of Wisconsin which empowered them to do so have the effect of being a racket as defined under RICO statutes.

The district court, during a telephonic hearing, dismissed the Vickroys's case in total, and without discovery, because in its opinion there was no cause on which it could grant relief. Further, it concurred with the Township that a notice of claim should have been filed with the Township before any action by the district court including civil rights violations. The district court did promise a judicial inquiry into the actions of the police officer and paramedic.

When the district court's order and opinion arrived it did not include the private party defendants and actions by both those parties and the Vickroys caused the court to issue a second order and opinion.

The Vickroys filed an appeal with the Seventh Circuit. Who affirmed the judgment of the Federal circuit

court, then dismissed the case against Crum & Forester due to "want of prosecution".

REASONS FOR GRANTING THE PETITION

(1) The Seventh Circuit has concluded, in error, that the actions of the Racine circuit court did not violate the Vickroy's right to free passage nor impose costs on them that they did not impose on residents of Wisconsin. Listed among the liberties secured by the right to free passage in Crandall v State of Nevada (73 U.S. 35:1867) is ". . .a right of free access. . . " [to] "the courts of justice in the several States . . ." and that "this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." The language of Crandall, *supra*, is very clear and all inclusive; it doesn't say the Federal courts residing in the several States, it embraces all courts of justice. When the Racine circuit court applied Wis. Stat. 814.28 to the Vickroys, making them pre-pay

Interstate Towing & Mobil's attorney $2000.00 before their case could be heard in court, it not only violated Article IV § 2 clause 1 of the United States Constitution, a well-spring of the right to travel, it violated their right to free passage as the statute only applies to nonresidents of Wisconsin, who are citizens of the United States, and therefore places upon them the disabilities of alienage. Further the Vickroy have the right of Civil Rights removal when they cannot enforce their rights in a state court.

(2) The Fourteenth Amendment cannot be avoided simply by a change of label, Giaccio v State of Pennsylvania (15 L. Ed. 2d. 447: 1966), and that both liberty and property are protected against any state deprivation which does not meet standards of due process; further a law fails to meet the requirements of due process if it leaves the public uncertain as to the conduct it prohibits, or leaves judges and jurors free to decide

without any legally fixed standards what is or is not prohibited.

The *Slaughter House Cases*, (Bittker on the Regulation of Interstate and Foreign Commerce by Boris I. Bittker with Brannon P. Denning, Aspen Law & Business 1185 Avenue of the Americas, New York, NY 10036:1999), currently define the limits of the Fourteenth Amendment as those right of national citizenship. The protections of the Sixth Amendment are among these rights. The established custom and practice of the State of Wisconsin, fully supported by the Racine circuit court who, denied them the enjoyment of their contract with Crum & Forester, of allowing its residents to take possession of another persons property without due process violates the protections of national citizenship. That the state of Wisconsin has chosen to abridge the Federally protected Privileges and Immunities of its own citizens is irrelevant and is no defense. Both the Federal

district court and the Seventh Circuit have remained silent on this issue.

(3) The Racine circuit court has, at the behest of the state of Wisconsin Department of Justice, abandoned Wisconsin's rules of procedure for those of the Seventh Circuit simply because the rules of Wisconsin did not favor the purposes of the state at that point in time. This act denied the Vickroys procedural due process. This the state's attorney freely admitted saying she knew "it was not the case" that the Vickroys should not have had the process due them, but "the principle was the same." Procedural due process is absolute and must be compiled with, Carey v Piphus (435 U.S. 247: 1978). This issue first raised in Federal district court and was left unaddressed by that court or the Seventh Circuit.

This serves as an introduction to a structure of related issues first raised in Federal district court. Wis.

Stat. Wis Stat. §. 16.61 (4) (b); RDA allows an agency, or department of Wisconsin to destroy all records of a project after six years. This is they very information that both the state of Wisconsin and Township of Mount Pleasant require in exacting detail, including the responsible individual(s) by name, in order to file a notice of claim. That this information is non-existent was confirmed in the Townships first brief to the Seventh Circuit where it declared the documents needed to successfully complete such notice had been destroyed. That a state, or one of its municipal corporations, may require information that it knows does not exist for a notice of claim is reprehensible. That they may do the same in court is antithetical to an American system of justice and ordered liberty. The petitioners request equity jurisdiction from the court and injunctive relief. For no party should be allowed, by law, to preemptively destroy evidence or to make systems of remedy under law into

rigged slot machines.

(4) The Vickroy's cited the Seventh Circuit's own Archie v City of Racine (847 F. 2d 1211:1988) in support of the unopposed affidavit of petitioner Timothy J. Vickroy first presented in Federal district court is in response to the error of the Federal district court which ignored the aforesaid affidavit and held that a notice of claim with the Township of Mount Pleasant was necessary in spite of the fact that Felder v Casey (487 US 131:1988) forbids the use of any notice of claim system as a bar from litigation in Federal court to any civil rights actions, such as those under Title 18 U.S.C. § 241, 242 and Title 42 U. S. C. § 1983. Types of violations of constitutional rights that can clearly be seen in the affidavit. The Seventh Circuit has ignored this appeal.

(5) Lastly two issues remain unaddressed by either court; that of removal, The Mayor v Cooper (6 L. Ed.247:

1868), which neither court has replied despite repeated entreaties and what was fundamentally a plea for equity jurisdiction from the Appellate court concerning the essentially discriminatory effect of Wisconsin "no-fault" insurance laws, and the practice it has engaged in of shaping its criminal and tort law around this concept.

The first issue is simple; the rulings of the state courts are determinative simply because the Federal district court, and the Seventh Circuit on appeal, have refused to deal with the issue of removal. They have, in fact, ignored it in spite if its central position in the Vickroys pleadings.

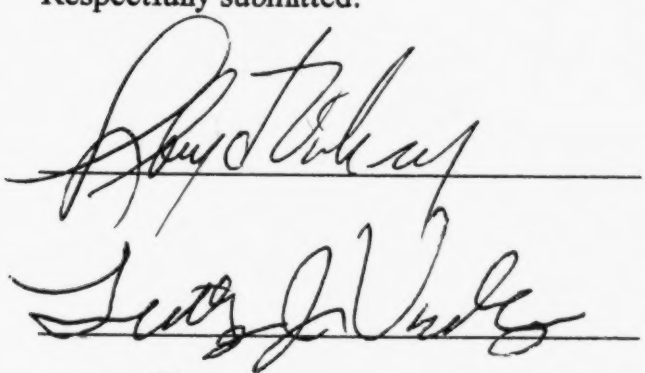
The second issue is far less simple for dual sovereignty gives the several states wide latitude in formulating their individual laws, however the Commerce Clause as well as the Privileges and Immunities Clause of Article IV of the Federal Constitution limit laws that have discriminatory effect or intent as they relate to non-

residents. Simply, Wisconsin law leaves a non-resident unable to treat with Wisconsin residents, human or corporate, on an equal footing and their tort system unduly favors residents of the state. Against these conditions the petitioners request injunctive relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted:



Date: 17 October 2003

Supreme Court, U.S.
FILED

(2)

03 640 OCT 27 2003

No.

IN THE

Supreme Court of the United States

LLOYD VICKROY and
TIMOTHY J. VICKROY,

Petitioners

v.

WISCONSIN DEPARTMENT OF
TRANSPORTATION, et al.,

Respondents

On Petition for a Writ of Certiorari
To The United States Court of Appeals
For the Seventh Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

LLOYD VICKROY, Pro Se
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UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604
Submitted July 29, 2003*
Decided July 31, 2003

Before

Hon.-Frank H. Easterbrook, Circuit Judge

Hon. Michael S. Kanne, Circuit Judge

Hon. Ann Claire WILLIAMS, Circuit Judge

LLOYD VICKROY and TIMOTHY J. VICKROY, *Plaintiffs-Appellants*, No. 02-3591 v. WISCONSIN DEPARTMENT OF TRANSPORTATION , et al., *Defendants-Appellees*.	Appeal from the United States District Court for the Eastern District of Wisconsin. No. Ol-C-1162 C.N. Clevert, Judge.

Order

Timothy Vickroy was injured in an automobile accident in Wisconsin. Defendants in this federal litigation by Timothy and his father Lloyd (who owned the car that Timothy was driving) include Wearer Swannigan (who the Vickroys say caused the accident by reckless driving), Ultea Inc. (the lessor of Swannigan's vehicle), Intermet Corp. (Swannigan's employer), Crum & Forster (which issued a policy of insurance covering Swannigan's use of that vehicle), Racine County (in whose jurisdiction the accident occurred), Mt. Pleasant Township (ditto), and the Wisconsin Department of Transportation (which plaintiffs believe caused, or approved, a poor roadway design that contributed to the accident). This is the Vickroys' second suit against Crum & Forster and the

FOOTNOTE (Page 1) *After an examination of the briefs and the record, we have concluded that oral argument, is unnecessary, and the appeal is submitted on the briefs and the record. See Fed, R. App. P. ;M(a);
Cir. R. 34(f).

Department. They sued both entities in state court, which ruled in the Department's favor on the basis of sovereign immunity after the Vickroys voluntarily dismissed Crum & Forster. The district court ruled in favor of all defendants in this federal case, for reasons that varied according to the defendant. We need not recite the details but turn to an analysis of the arguments presented on appeal. (We cover only arguments raised in the Vickroys' opening brief; contentions in their reply brief, but omitted from the

opening brief, have not been preserved for decision. Nor do we address several arguments that the Vickroys have raised on appeal but not in the district court.)

The Vickroys contend that the Department violated their constitutional right to travel (which they style a "right to free passage") by causing or permitting road designs that lead to accidents. The suit readily could be dismissed as frivolous—Wisconsin did not try to turn visitors away at the border or impose costs on visitors exceeding those borne by its own citizens—but there is an antecedent problem: 42 U.S.C. §1983 does not authorize it in the first place, as units of state government are not "persons" under that statute. See Will v. Michigan Department of State Police, 491 U.S. 58 (1989). The Vickroys contend that the Department is "self sustaining" and therefore not part of "the state" for purposes of the eleventh amendment. This contention is both incorrect, sec University of California v. Doe, 519 U.S. 425 (1997), and irrelevant: whether an entity is a "person" comes ahead of any constitutional inquiry. See Lapides v. University of Georgia, 535 U.S. 613 (2002). The Department is not a "person" for purposes of §1983, so the district court properly dismissed it. (The state court's determination that the Department cannot be sued under state law is preclusive against the Vickroys, so only federal claims against it could be available.)

Claims against the remaining defendants are supported by the diversity jurisdiction: the Vickroys are citizens of Missouri, and all defendants are citizens of other states. Plaintiffs seek more than $75,000 in damages. (Though the complaint is not clear on these matters, they are established in the record and an amendment under 28 U-S.C. §1653 would show subject-matter jurisdiction.)

But the only argument properly presented on appeal with respect to these defendants is unavailing. The Vickroys contend that they are entitled to compensation under Wis. Stat. §950, the state's crime victims bill of rights, because Swannigan was cited and fined for a moving violation. Yet Wisconsin does not treat this as a "crime" for the purpose of §950; traffic fines are treated as forfeitures rather than convictions under state law. See Wis. Stat. §§ 346.18, 346.22, 939.12, 950.02(lm). What is more, the victims' bill of rights prohibits suit against towns and counties unless their misconduct was intentional, see §§ 950.10, 950.11, and the Vickroys have not offered any reason to infer that this condition has been satisfied.

Perhaps the Vickroys had a claim against Swannigan based on ordinary tort law; perhaps Swannigan's employer would have been vicariously liable. But plaintiffs have not pursued the normal tort theories. The claims that we have covered—the only ones properly preserved for decision on appeal—offer them no prospect of success.

AFFIRMED

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

JUDGMENT- WITHOUT ORAL ARGUMENT

Date: July 31, 2003

United States. District Court

EASTERN DISTRICT OF WISCONSIN

JUDGMENT IN A CIVIL CASE

TIMOTHY JOHN VICKROY,
LLOYD VICKROY,
Plaintiffs,

v. Case No. 01-C-1162

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION;
INTERNET CORPORATION;
WEARER D. SWANNIGAN;
ULTEA, INC.;
COUNTY OF RACINE, WISCONSIN;
TOWNSHIP OF MOUNT PLEASANT,
WISCONSIN;
CRUM & FORSTER,

Defendants.

This action came before the court. The issues have been decided and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this case is dismissed.

APPROVED: C. N. CLEVERT/s
C. N. CLEVERT
U. S. District Judge

SOFRON B. NEDILSKY
Clerk

9 -4 - 02 M. Jones/s
Date (By) Deputy Clerk

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

TIMOTHY JOHN VICKROY,
LLOYD VICKROY,
Plaintiffs,

v. Case No. 01-C-1162

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION;
INTERNET CORPORATION;
WEARER D. SWANNIGAN;
ULTEA, INC.;
COUNTY OF RACINE, WISCONSIN;
TOWNSHIP OF MOUNT PLEASANT,
WISCONSIN;
CRUM & FORSTER,

Defendants.

DECISION AND ORDER GRANTING WDOT'S MOTION TO DISMISS (DOC. #24), RACINE COUNTY'S MOTION TO DISMISS (DOC. #18), DEFENDANT MOUNT PLEASANT'S MOTION TO DISMISS (DOC. #32), GRANTING DEFENDANT ULTEA CORPORATION'S MOTION TO DISMISS (DOC. #25), GRANTING DEFENDANT CRUM & FORSTER'S MOTION TO DISMISS (DOC. #51), DENYING MOTION TO STRIKE TOWNSHIP OF MOUNT PLEASANT'S RESPONSE TO MOTION TO FILE FIRST AMENDED COMPLAINT (DOC. #46), DENYING MOTION TO STRIKE STATE OF WISCONSIN'S RESPONSE TO PLAINTIFF'S MOTION TO FILE AMENDED COMPLAINT (DOC. #48), DENYING MOTION FOR HEARING ON MOTION TO FILE AMENDED COMPLAINT (DOC. #42), DENYING MOTION FOR PARTIAL SUMMARY JUDGMENT (DOC. #60-1), DENYING MOTION TO COMPEL (DOC. #60-2), AND GRANTING MOTION FOR ENTRY OF JUDGMENT (DOC. #71)

This matter came before the court for a telephonic hearing on pending motions. Appearing for the pro se plaintiffs were Timothy John Vickroy and Lloyd Vickroy (the Vickroys). Appearing for defendant Wisconsin Department of Transportation (WDOT) was Assistant

Attorney General David E. Hoel. Appearing for defendants Internet Corporation (Internet), Wearer D. Swannigan, and Ultea Incorporated, and Crum & Forster Insurance Corporation was Attorney Jeffrey S. Fertl. Appearing for defendant Racine County was Assistant Corporation Counsel Matthew S. McVey. Appearing for defendant Township of Mount Pleasant was Attorney Gregg Heidenreich.

Before the court are five motions to dismiss, brought by various defendants, the Vickroy's motion to amend the complaint, the Vickroy's motion to dismiss (strike) WDOT's response to the motion to amend, the Vickroy's motion to dismiss (strike) the Township of Mount Pleasant's motion to dismiss the first amended complaint, the Vickroy's motion for partial summary judgment, and the Vickroy's motion to compel. For the reasons set forth on the record, the defendants' motions to dismiss will be granted, while all other motions shall be

denied as moot.

Now, therefore,

IT IS ORDERED that defendant Wisconsin Department of Transportation's Motion to Dismiss (Doc. #24) is granted.

IT IS FURTHER ORDERED that defendant Racine County's Motion to Dismiss (Doc. #18) is granted.

IT IS FURTHER ORDERED that defendant Mount Pleasant's Motion to Dismiss (Doc. #32) is granted.

IT IS FURTHER ORDERED that defendants Ultea Corporation's Motion to Dismiss (Doc. #25) is granted.

IT IS FURTHER ORDERED that defendant Crum & Forster's Motion to Dismiss (Doc. #51) is granted.

IT IS FURTHER ORDERED that plaintiff Lloyd and Timothy John Vickroy's Motion to Strike Township of Mount Pleasant's Response to Motion to File First

Amended Complaint (Doc. #46) is denied.

IT IS FURTHER ORDERED that plaintiff Lloyd and Timothy John Vickroy's Motion to Strike State of Wisconsin's Response to Plaintiff's Motion to File Amended Complaint (Doc. #48) is denied.

IT IS FURTHER ORDERED that plaintiff Lloyd and Timothy John Vickroy's Motion for a Hearing on Motion to File Amended Complaint (Doc. #42) is denied.

IT IS FURTHER ORDERED that plaintiff Lloyd and Timothy John Vickroy's Motion for Partial Summary Judgment (Doc. #60-1) is denied.

IT IS FURTHER ORDERED that plaintiff Lloyd and Timothy John Vickroy's Motion to Compel (Doc. #60-2) is denied.

IT IS FURTHER ORDERED that the motion of defendant Wisconsin Department of Transportation for Entry of Judgment is granted.

Dated at Milwaukee, Wisconsin, this 4th day of

September, 2002.

BY THE COURT

C. N. CLEVERT/s
C. N. CLEVERT
U. S. District Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WISCONSIN

TIMOTHY JOHN VICKROY,
LLOYD VICKROY,
Plaintiffs,

v. Case No. 01-C-1162

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION;
INTERNET CORPORATION;
WEARER D. SWANNIGAN;
ULTEA, INC.;
COUNTY OF RACINE, WISCONSIN;
TOWNSHIP OF MOUNT PLEASANT,
WISCONSIN;
CRUM & FORSTER,

Defendants.

ORDER CLARIFYING ORDER OF DISMISSAL DATED SEPTEMBER 4, 2002, DENYING PLAINTIFFS' MOTION FOR PERMISSION TO FILE A SECOND AMENDED COMPLAINT, AND DENYING PLAINTIFFS' MOTION FOR ORDER TO DISCLOSE

On September 4, 2002, this court denied plaintiffs' motion for hearing on motion to file amended complaint, granted the pending motions to dismiss, and granted the motion for entry of judgment. Judgment was entered that same day. To the extent the September 4, 2002, order did not properly reflect that Crum & Foster's motion to dismiss (Doc. #51) was also filed on behalf of Internet Corporation and Wearer D. Swannigan, it is so amended.

In addition, plaintiffs recently filed a motion for permission to file a second amended complaint, motion for second amended complaint and motion for order to disclose. A previous motion to amend was denied. Moreover, plaintiffs have not sought reconsideration,

moved to reopen the case, or shown that they have stated a claim entitling them to relief on their amended complaint. Lastly, an order requiring the named defendants to disclose the identities of officials, employees, and contractors who violated their ministerial duties with respect to the events of December 2, 1998, is not warranted as this case has been dismissed.

Now, therefore,

IT IS ORDERED that the letter request by Attorney Jeffrey S. Fertl for clarification of the court's order dated September 4, 2002, is granted.

IT IS FURTHER ORDERED that the motion to dismiss filed by Crum & Forster, Internet Corporation, and Wearer D. Swannigan is granted nunc pro tunc September 4, 2002.

IT IS FURTHER ORDERED that plaintiffs' motion for permission to file a second amended

complaint is denied.

IT IS FURTHER ORDERED that plaintiffs' motion for order to disclose is denied.

Dated at Milwaukee, Wisconsin, this 18th day of September, 2002.

BY THE COURT

C. N. CLEVERT/s
C. N. CLEVERT
U. S. District Judge

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SUPREME COURT OF WISCONSIN
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May 21,2002

To:

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Racine County Circuit Court
730 Wisconsin Avenue
Racine, WI 53403

Tari Wheary
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Caulfield, MO 65626

Lloyd Vickroy
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Caulfield, MO 65626

You are hereby notified that the Court has entered the

following order:

01-1802 Vickroy et al. v. Interstate Towing and Mobil L.C. #99CV1408

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of plaintiffs-appellants-petitioners, Timothy John Vickroy and Lloyd Vickroy, and a motion filed by defendant-respondent, interstate Towing and Mobil, for an award of frivolity fees and costs under Wis. Stat. § 809.25(3), and both considered by this court;

IT IS ORDERED that the petition for review is denied, with $50 costs.

IT IS FURTHER ORDERED the defendant-respondent's motion for an award of costs and fees pursuant to Wis. Stat. § (Rule) 809.25(3) is denied.

Cornelia G. Cark
Clerk of Supreme Court

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Cornelia G. Clark
Clerk

September 13,2000

To:

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Racine, WI 53403

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Jeffrey Leavell, S.C.
723 South Main Street
Racine, WI 53403

Tari Wheary, Trial Court
Clerk
Racine County
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You are hereby notified that the Court has entered the following order:

00-2147 Timothy John Vickroy, et al. v. State of Wisconsin-Dept. of Transportation, et al. (L.C. #99-CV-1408)

Before Brown, P.J.,

Defendant-respondent Interstate Towing and Mobil has filed a motion to dismiss seeking frivolity fees and costs on the grounds that the appellants have sought to appeal from a non-final order of the circuit court. The record indicates that the circuit court entered a memorandum decision on July 7, 2000 noting that an order for judgment would follow The appellants filed their notice of appeal on August 7, 2000. The order for judgment was entered August 8, 2000. Wis. stat. § 808.04(8) provides that "[I]f the record discloses that the judgment or order appealed from was entered after the notice of appeal was filed, the notice of appeal shall be

treated as filed after such entry and on the day thereof." Wis. stat. § 808.04(8) will govern here, and the defendant-respondent's motion to dismiss and for frivolity fees and costs is denied.

We note further that the plaintiff-appellant's notice of appeal purports to appeal from an order dismissing the State of Wisconsin-Department of Transportation entered February 14, 2000. Pursuant to Wis. stat. § 808.03(1), the order entered February 14, 2000 disposed of the entire matter as to the State of Wisconsin-Department of Transportation. Therefore, the notice of appeal filed with respect to this defendant is not timely and the appeal against the State of Wisconsin-Department of Transportation is dismissed.

Upon the foregoing reasons,

IT IS ORDERED that the defendant-respondent Interstate Towing and Mobil's Motion to Dismiss and for Frivolity Fees and Costs is denied.

IT IS FURTHER ORDERED that the appeal with respect to the defendant State of Wisconsin-Department of Transportation is dismissed.

"I, Cornelia G. Cark, Clerk of the Court of Appeals of the State of Wisconsin, certify that I have compared the foregoing with the original order and/or judgment of the Court in the above entitled cause, and that it is a correct transcript thereof."

Lisa L. Ferman/s, Deputy
Clerk of the Court of Appeals, State of Wisconsin

3/1/02
Date

STATE OF WISCONSIN CIRCUIT
COURT RACINE COUNTY

TIMOTHY JOHN VICKROY
LLOYD VICKROY

Case No. 99 CV 1408

Plaintiffs,

v.

INTERSTATE TOWING
AND MOBILE,
Defendant.

ORDER FOR SUMMARY JUDGMENT

This matter having come before the Court on June 22, 2000 on defendant Interstate Towing and Mobile's Motion for Summary Judgment And Frivolity Fees and Costs Under Section 814.025, and 802.05, Stats.; Interstate Towing and Mobile appearing by its counsel Jeffrey Leavell, S.C. by Christine M. Genthner; Plaintiff Lloyd Vickroy appearing in person, pro se; Plaintiff, Timothy John Vickroy, failing to appear.

After review of Interstate Towing and Mobile's Motion together with supporting Affidavits and Brief, Plaintiff, Lloyd Vickroy's Opposition Memorandum, hearing arguments of counsel and plaintiff Lloyd Vickroy, and otherwise being fully advised in the premises, the court held that there is no genuine issue as to any material fact and Interstate Towing and Mobile is entitled to a judgment as a matter of law;

IT IS HEREBY ORDERED,

(1) Interstate Towing and Mobile' s Motion for Summary Judgment pursuant to Section 802.02, Wis. Stats, is hereby granted. Interstate Towing shall be dismissed from this matter, with prejudice.

(2) Interstate Towing and Mobile's Motion for Frivolity fees and Costs Under Section 814.025 and 802.05, Stats, is taken under advisement by the Court.

(3) Jeffrey Leavell, S.C. shall keep in its trust account the $2,000.00 security for costs posted by the plaintiffs

and make no payments from this amount until further order of the court.

(4) The plaintiffs' request for a sanction against Interstate Towing and Mobile "of not being able to tow and impound vehicles for any law enforcement agency in the State of Wisconsin" is denied.

Dated this 6 day of JULY, 2000.

BY THE COURT:

Allan B. Torhorst/s
Allan B. Torhorst
Circuit Court Judge